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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8 SAN JOSE DIVISION  
9 Kevin Collins, No. C 07-01532 JW  
10 Plaintiffs, **ORDER OF DISMISSAL PURSUANT TO**  
11 v. **FED. R. CIV. P. 41(b)**  
12 Federal Express, et al.,  
13 Defendants.  
14 \_\_\_\_\_/

15 This case was scheduled for a Preliminary Pretrial Conference on October 20, 2008.  
16 Pursuant to the Court's Scheduling Order, the parties were to file a Joint Preliminary Pretrial  
17 Statement on or before October 10, 2008 but failed to do so. (See Docket Item No. 24.) On its own  
18 motion, the Court contacted the parties and was informed by Mr. David Wilson, counsel for  
19 Defendant Federal Express, that above-entitled matter had reached a settlement as of February,  
20 2008.

21 In light of Mr. Wilson's representation, the Court issued an Order to Show Cause re:  
22 Settlement. (See Docket Item No. 27.) The Court vacated all trial and pretrial dates and required  
23 the parties to file the necessary stipulated dismissal pursuant to Federal Rule of Civil Procedure  
24 41(a) on or before November 7, 2008, or in the alternative, to file a joint statement in response to the  
25 Order to Show Cause. To date the parties have failed to file either the stipulated dismissal or a  
26 response to the Court's order.

27 The Court once again contacted the parties and was informed by Mr. Wilson that the  
28 settlement proceeds have been paid and that Plaintiff's counsel had agreed to file the stipulated

1 dismissal. Plaintiff's counsel has failed to do so and has failed to otherwise communicate with the  
2 Court. Notably, in its October 25 Order, the Court warned the parties that failure to comply with  
3 any part of that Order will be deemed sufficient grounds to dismiss this action.

4 In light of the parties' failure to comply with the Court's October 25, 2008 Order, the Court  
5 ORDERS this action dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b).

6 Each party shall bear their own fees and costs. The Clerk shall close this file.

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8 Dated: November 12, 2008

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*James Ware*  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 David Sidney Wilson dswilson@fedex.com  
3 Waukeen Quandrico McCoy mccoylawsf@yahoo.com  
3 Angela Alioto, murlene@randlelawoffices.com

4 **Dated: November 12, 2008**

5 **Richard W. Wieking, Clerk**

6 By: /s/ JW Chambers  
7 Elizabeth Garcia  
7 Courtroom Deputy